IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1161 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JILUBEN ISMAIL

Appearance:

MR HARDIK C RAWAL for appellant.
MR NK PAHWA for M/S THAKKAR ASSOC. for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 11/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. This appeal is directed against the judgment and award dated August 6, 1984, rendered in Motor Accident Claim Petition No. 33 of 1983 by the Motor Accident Claims Tribunal, Amreli by which the respondents, who are the heirs and legal representatives of deceased Ismail, were awarded total compensation of Rs.77,000/- with interest at the rate of 6% from the date of the petition till realization of the amount from the appellant on account of the death of Ismailbhai who had died instantaneous death on the spot in a vehicular accident which had taken place as a result of head on collision between the fiat car driven by the deceased and and S.T. bus driver by its driver.

2. On the day of the alleged incident, deceased Ismailbhai in the company of Jamalbhai Sulemanbhai, while driving fiat car was proceeding from Amreli to Jasdan. When the said fiat car reached at the spot of the occurrence, the driver of the S.T. bus bearing registration No. 8140 came driving the bus from the opposite direction and dashed the bus with the fiat car. As a result of the head on collision the deceased who was on the steering received injuries and died instantaneous death on the spot.

3. Putting forward the claim with respect to the negligence, it was averred by the claimants that the driver of the S.T. bus was solely rash and negligent in driving the vehicle and as a result of which the said mishap had taken place. Putting forward the claim with regard to the quantum of compensation, it was averred that the deceased was engaged in transport business and he was earning a very handsome amount of Rs.16,000/- per annum. It was also averred that the deceased was hale and hearty and he had no vices. Therefore, the heirs and legal representatives of deceased Ismail claimed total compensation of Rs.2,80,000/- from the S.T. Corporation by way of dependency benefit on account of untimely demise of deceased Ismailbhai.

4. The claim petition was resisted by the S.T. Corporation by filing written statement wherein, inter alia, negligence and rashness on the part of the driver of the S.T. Corporation was totally denied. It was contended that the deceased himself was driving the vehicle rashly and negligently and, therefore, he himself was responsible for causing the said mishap. So far as the income of the deceased as claimed by the claimants was concerned, it was also denied that the deceased was

earning the amount claimed in the petition. Lastly it was contended that the claim preferred by the claimants was on higher side and excessive and, therefore, the same may be dismissed with costs.

5. The Tribunal on appreciation and evaluation of the evidence came to the conclusion that the deceased driver was negligent to the extent of 50% in causing the said accident. Therefore, negligence was attributed in the ratio of 50% on the part of both the drivers. Thereafter the Tribunal assessed the income of the deceased at Rs.1000/- per month and deducting Rs.200/for personal upkeepment, assessed the dependency value at Rs.800/- per month and applied 15 purchase factors and awarded total dependency benefit at Rs.1,44,000/- and thereafter halved the said amount on account of 50% negligence on the part of the deceased himself and the total dependency benefit was assessed at Rs.72,000/- to which an amount of Rs.50000/- was added as a global amount and thus in all awarded an amount of Rs.77,000/-

6. Mr. Rawal, learned counsel for the S.T. Corporation, contended that the driver of the S.T. Corporation who was examined before the Tribunal has unequivocally deposed in his oral testimony that the deceased was smelling of alcohol and, therefore, it is clear that the deceased was driving the vehicle under intoxication. In this view of the matter the learned Tribunal ought to have attributed 100% negligence to the deceased himself. What was emphasized by the learned counsel was that the income assessed of the deceased was on higher side and the amount of Rs.200/- which was deducted for personal upkeepment was on lower side and, therefore, the award is required to be reduced to the said extent.

7. Mr. Pahwa, learned counsel for the respondents original claimants supported the judgment and award of the Tribunal. He contended that on the contrary the learned Tribunal has awarded a very less amount by taking a conservative view and, therefore, no interference is called for in the impugned judgment and award by this Court.

8. We have considered the submissions advanced by the learned counsel for the respective parties. We have perused the evidence and the documents annexed with the claim petition. So far as the oral evidence is concerned, the occupant of the fiat car Jamalbhai Sulemanbhai was examined at Ex.30 on behalf of the claimants whereas the driver of the S.T. Corporation was

also examined on behalf of the Corporation. We have perused the evidence minutely and we are of the opinion that the Tribunal has very rightly held that there was head on collision and, therefore, both the drivers were responsible in the ratio of 50%. We, therefore, uphold the finding recorded by the Tribunal with respect to negligence.

9. So far as the quantum of compensation awarded by the Tribunal, we are fully satisfied that the Tribunal has awarded a just, reasonable and fair compensation. It has come in evidence that the deceased who was engaged in transport business at the relevant time was having two vehicles and, therefore, the Tribunal has rightly assessed the income of the deceased at Rs.1,000/per month and thereafter rightly deducted Rs.200/- by way of personal upkeep of the deceased and ultimately determined Rs.800/- as dependency benefit available to the claimants. Besides this, the Tribunal has also correctly applied the right multiplier of 15 purchase factor looking to the age of the deceased who was 30 years at the relevant time and thereafter sliced down the compensation by 50% on account of the 50% negligence attributed to the deceased himself. We are, therefore, fully satisfied that the Tribunal has rightly awarded the compensation of Rs.77,000/- to the claimants.

10. On overall view of the matter, we are fully satisfied that the Tribunal has committed no error in deciding the issue of negligence by fastening the negligence in the ratio of 50% on the drivers of both the vehicles as well as compensation awardable to the claimants.

11. It is held by the Supreme Court in Nagappa v. New India Assurance Company Limited, (1998) 9 SCC 271, that interference with quantum of compensation in appeal is permissible only on the ground of the compensation being inadequate or too excessive. In view of the discussion made in para supra we are fully satisfied that the amount of compensation awarded by the Tribunal cannot be said to be excessive, exorbitant or punitive to the party who has to pay the compensation, requiring our interference in the impugned award. In the premises we find no substance in the appeal and the same requires to be dismissed.

12. It is a settled legal position that even at the final hearing stage when the appellate court agrees with the reasons given and conclusions arrived at by the learned Tribunal, it is not necessary for the appellate

court to reiterate the evidence and elaborately state reasons for reaching the same conclusion. Expression of general agreement with the reasons given and conclusions arrived at by the learned Tribunal would be sufficient. This is so held by the Supreme Court in the case of Girija Nandini Devi and others v. Bijendra Narain Chaudhari, AIR 1967 SC 1124 and State of Karnataka v. Hema Reddy, AIR 1981 SC 1417. On over all appreciation of the evidence which is discussed at length in the impugned judgment, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Tribunal while determining the compensation which, according to us, is just, reasonable and fair and does not warrant any interference at the hands of this Court. In short, in the instant case, as indicated hereinabove, we agree with the reasons given and conclusions arrived at by the learned Tribunal.

13. For the foregoing reasons, the appeal fails and the same is dismissed with no order as to costs.

(R.K. Abichandani, J.)

11.1.2001. (A. M. Kapadia, J.)

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